

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**03-28-07
10:51 AM

March 28, 2007

Agenda ID #6528
Quasi-Legislative

TO PARTIES OF RECORD IN RULEMAKING 06-10-005

This is the proposed decision of Commissioner Chong. The comment period has been reduced to seven days, pursuant to Rule 14.6(c)(9). It may therefore appear on the Commission's agenda less than 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's **Rules of Practice and Procedure** (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages .

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic copies of comments should be sent to Administrative Law Judge (ALJ) Sullivan at tjs@cpuc.ca.gov. All parties must serve hard copies on the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hl2

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER CHONG**
(Mailed 3/28/2007)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking for Adoption of a General Order and
Procedures to Implement the Digital
Infrastructure and Video Competition Act of
2006.

Rulemaking 06-10-005
(Filed October 5, 2006)

OPINION MODIFYING DECISION 07-03-014

This order is brought on the Commission' own motion to modify Decision (D.) 07-03-014, which adopted a General Order and Procedures to implement the Digital Infrastructure and Video Competition Act of 2006 (DIVCA) (AB 2987, Ch. 700, Stats. 2006).

Among the items contained in D.07-03-014 was the form of the video franchise certificate to be granted to successful applicants. By statute the certificate is required to contain all of the following:

- (1) A grant of authority to provide video service in the service area footprint as requested in the application;
- (2) A grant of authority to use the public rights-of-way, in exchange for the franchise fee adopted under subdivision (q), in the delivery of video service, subject to the laws of this state; and

- (3) A statement that the grant of authority is subject to lawful operation of the cable service or video service by the applicant or its successor in interest.¹

Inadvertently the adopted form of the certificate did not include this statutorily-specified language. It is the purpose of this order to modify the adopted form of certificate to include these requirements. The revised form of certificate is attached to this order.

In addition, to provide greater flexibility in modifying administrative materials associated with the implementation of DIVCA, such as the application form and the franchise certificate, in the future as changes may be required, we authorize the Director of the Communications Division to prepare a resolution for Commission consideration modifying such forms without the further necessity of modifying D.07-03-017.

Comments on Proposed Decision

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Due to the urgent need to ensure that the certificates granted comply with California law, the comment period is reduced to seven days pursuant to Rule 14.6(c)(9).

Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Timothy J. Sullivan and Steven Kotz are the assigned Administrative Law Judges in this proceeding.

¹ CA Public Utilities Code Section 5840(i)

Findings of Fact

1. AB 2987 requires that the certificate that is the video franchise document contain:

- a. A grant of authority to provide video service in the service area footprint as requested in the application.
- b. A grant of authority to use the public rights-of-way, in exchange for the franchise fee adopted in DIVCA, in the delivery of video service, subject to the laws of this state.
- c. A statement that the grant of authority is subject to lawful operation of the cable service or video service by the applicant or its successor in interest.

2. The form of the certificate adopted in D.07-03-017 inadvertently did not include all of the language required by DIVCA.

3. It is reasonable to make minor modifications to administrative forms associated with DIVCA through resolution, rather than through future modification of D.07-03-017.

Conclusions of Law

1. The franchise certificate should be modified as shown in Attachment A.
2. The Director of the Communications Division should be authorized to obtain approval of future modifications to video franchise forms by preparing a resolution for Commission consideration.
3. The comment period should be reduced to ensure that certificates comply with statutory requirements as soon as possible.

O R D E R

1. The certificate to be provided to those awarded franchises pursuant to the Digital Infrastructure and Video Competition Act of 2006 (DIVCA) (AB 2987, Ch. 700, Stats. 2006) is as set forth in the attachment to this order.

2. The Director of the Communications Division shall mail replacement certificates conforming to Attachment A to all current franchise holders.

3. The Director of the Communications Division is authorized to present to the Commission for consideration via resolution future changes to forms utilized to implement DIVCA.

4. A copy of this order shall be served on all those who have already received video franchises, so that they are aware of the obligations upon them.

5. The comment period for this decision is reduced to seven days.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability is current as of today's date.

Dated March 28, 2007, at San Francisco, California.

/s/ ELIZABETH LEWIS
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